

108TH CONGRESS
1ST SESSION

S. 1518

To restore reliability to the medical justice system by fostering alternatives to current medical tort litigation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

Mr. ENZI introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To restore reliability to the medical justice system by fostering alternatives to current medical tort litigation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reliable Medical Jus-
5 tice Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to restore reliability to the medical justice
9 system by fostering alternatives to current medical
10 tort litigation that promote early disclosure of health

1 care errors and provide prompt, fair, and reasonable
 2 compensation to patients who are injured by health
 3 care errors; and

4 (2) to support and assist States in developing
 5 such alternatives.

6 **SEC. 3. STATE DEMONSTRATION PROGRAMS TO EVALUATE**
 7 **ALTERNATIVES TO CURRENT MEDICAL TORT**
 8 **LITIGATION.**

9 Part P of title III of the Public Health Service Act
 10 (42 U.S.C. 280g et seq.) is amended by adding at the end
 11 the following:

12 **“SEC. 3990. STATE DEMONSTRATION PROGRAM TO EVALU-**
 13 **ATE ALTERNATIVES TO CURRENT MEDICAL**
 14 **TORT LITIGATION.**

15 “(a) IN GENERAL.—The Secretary is authorized to
 16 award demonstration grants to States for the develop-
 17 ment, implementation, and evaluation of alternatives to
 18 current tort litigation for resolving disputes over injuries
 19 allegedly caused by health care providers or health care
 20 organizations.

21 “(b) DURATION.—The Secretary may award up to 7
 22 grants under subsection (a) and each grant awarded under
 23 such subsection may not exceed a period of 10 years.

24 “(c) CONDITIONS FOR DEMONSTRATION GRANTS.—

1 “(1) REQUIREMENTS.—Each State desiring a
2 grant under subsection (a) shall—

3 “(A) develop an alternative to current tort
4 litigation for resolving disputes over injuries al-
5 legedly caused by health care providers or
6 health care organizations that may be 1 of the
7 models described in subsection (d); and

8 “(B) establish procedures to allow for pa-
9 tient safety data related to disputes resolved
10 under subparagraph (A) to be collected and
11 analyzed by organizations that engage in vol-
12 untary efforts to improve patient safety and the
13 quality of health care delivery, in accordance
14 with guidelines established by the Secretary.

15 “(2) ALTERNATIVE TO CURRENT TORT LITIGA-
16 TION.—Each State desiring a grant under sub-
17 section (a) shall demonstrate how the proposed al-
18 ternative described in paragraph (1)(A)—

19 “(A) makes the medical liability system
20 more reliable;

21 “(B) enhances patient safety; and

22 “(C) maintains access to liability insur-
23 ance.

24 “(3) SOURCES OF COMPENSATION.—Each State
25 desiring a grant under subsection (a) shall identify

the sources from and methods by which compensation would be paid for claims resolved under the proposed alternative to current tort litigation, which may include public or private funding sources, or a combination of such sources. Funding methods may provide financial incentives for activities that improve patient safety.

“(4) SCOPE.—Each State desiring a grant under subsection (a) may establish a scope of jurisdiction (such as a designated geographic region or a designated area of health care practice) for the proposed alternative to current tort litigation that is sufficient to evaluate the effects of the alternative.

“(d) MODELS.—

“(1) IN GENERAL.—Any State desiring a grant under subsection (a) that proposes an alternative described in paragraph (2), (3), or (4) shall be deemed to meet the criteria under subsection (c)(2).

“(2) EARLY DISCLOSURE AND COMPENSATION MODEL.—In the early disclosure and compensation model, the State shall—

“(A) provide immunity from tort liability (except in cases of fraud, or in cases of criminal or intentional harm) to any health care provider or health care organization that enters into an

1 agreement to pay compensation to a patient for
2 an injury;

3 “(B) set a limited time period during
4 which a health care provider or health care or-
5 ganization may make an offer of compensation
6 benefits under subparagraph (A), with consider-
7 ation for instances where prompt recognition of
8 an injury is unlikely or impossible;

9 “(C) require that the compensation pro-
10 vided under subparagraph (A) include—

11 “(i) payment for the net economic loss
12 of the patient, on a periodic basis, reduced
13 by any payments received by the patient
14 under—

15 “(I) any health or accident insur-
16 ance;

17 “(II) any wage or salary continu-
18 ation plan; or

19 “(III) any disability income in-
20 surance;

21 “(ii) payment for the patient’s pain
22 and suffering, if appropriate for the injury,
23 based on a capped payment schedule devel-
24 oped by the State in consultation with rel-
25 evant experts; and

1 “(iii) reasonable attorney’s fees;

2 “(D) not abridge the right of an injured
3 patient to seek redress through the State tort
4 system if a health care provider does not enter
5 into a compensation agreement with the patient
6 in accordance with subparagraph (A);

7 “(E) prohibit a patient who accepts com-
8 pensation benefits in accordance with subpara-
9 graph (A) from filing a health care lawsuit
10 against other health care providers or health
11 care organizations for the same injury; and

12 “(F) permit a health care provider or
13 health care organization that enters into an
14 agreement to pay compensation benefits to an
15 individual under subparagraph (A) to join in
16 the payment of the compensation benefits of
17 any health care provider or health care organi-
18 zation that is potentially liable, in whole or in
19 part, for the injury.

20 “(3) ADMINISTRATIVE DETERMINATION OF
21 COMPENSATION MODEL.—

22 “(A) IN GENERAL.—In the administrative
23 determination of compensation model—

24 “(i) the State shall—

1 “(I) designate an administrative
 2 entity (in this paragraph referred to
 3 as the ‘Board’) that shall include rep-
 4 resentatives of—

5 “(aa) relevant State licens-
 6 ing boards;

7 “(bb) patient advocacy
 8 groups;

9 “(cc) health care providers
 10 and health care organizations;
 11 and

12 “(dd) attorneys in relevant
 13 practice areas;

14 “(II) set up classes of avoidable
 15 injuries that will be used by the Board
 16 to determine compensation under
 17 clause (ii)(II) and, in setting such
 18 classes, may consider 1 or more fac-
 19 tors, including—

20 “(aa) the severity of the dis-
 21 ability arising from the injury;

22 “(bb) the cause of injury;

23 “(cc) the length of time the
 24 patient will be affected by the in-
 25 jury;

1 “(dd) the degree of fault of
2 the health care provider or health
3 care organization; and

4 “(ee) standards of care that
5 the State may adopt and their
6 breach;

7 “(III) modify tort liability,
8 through statute or contract, to bar
9 negligence claims in court against
10 health care providers and health care
11 organizations for the classes of inju-
12 ries established under subclause (II),
13 except in cases of fraud, or in cases of
14 criminal or intentional harm;

15 “(IV) outline a procedure for in-
16 forming patients about the modified
17 liability system described in this para-
18 graph and, in systems where partici-
19 pation by the health care provider,
20 health care organization, or patient is
21 voluntary, allow for the decision by
22 the provider, organization, or patient
23 of whether to participate to be made
24 prior to the provision of, use of, or
25 payment for the health care service;

1 “(V) provide for an appeals proc-
2 ess to allow for a review of decisions;
3 and

4 “(VI) establish procedures to co-
5 ordinate settlement payments with
6 other sources of payment;

7 “(ii) the Board shall—

8 “(I) resolve health care liability
9 claims for certain classes of avoidable
10 injuries as determined by the State
11 and determine compensation for such
12 claims; and

13 “(II) develop a schedule of com-
14 pensation to be used in making such
15 determinations that includes—

16 “(aa) payment for the net
17 economic loss of the patient, on a
18 periodic basis, reduced by any
19 payments received by the patient
20 under any health or accident in-
21 surance, any wage or salary con-
22 tinuation plan, or any disability
23 income insurance;

24 “(bb) payment for the pa-
25 tient’s pain and suffering, if ap-

1 appropriate for the injury, based on
2 a capped payment schedule devel-
3 oped by the State in consultation
4 with relevant experts; and

5 “(cc) reasonable attorney’s
6 fees; and

7 “(iii) the Board may—

8 “(I) develop guidelines relating
9 to—

10 “(aa) the standard of care;
11 and

12 “(bb) the credentialing and
13 disciplining of doctors; and

14 “(II) develop a plan for updating
15 the schedule under clause (ii)(II) on a
16 regular basis.

17 “(B) APPEALS.—The State, in establishing
18 the appeals process described in subparagraph
19 (A)(i)(V), may choose whether to allow for de
20 novo review, review with deference, or some op-
21 portunity for parties to reject determinations by
22 the Board and elect to file a civil action after
23 such rejection. Any State desiring to adopt the
24 model described in this paragraph shall indicate

1 how such review method meets the criteria
2 under subsection (c)(2).

3 “(C) TIMELINESS.—Any claim handled
4 under the system described in this paragraph
5 shall provide for adjudication that is more time-
6 ly and expedited than adjudication in a tradi-
7 tional tort system.

8 “(4) SPECIAL HEALTH CARE COURT MODEL.—
9 In the special health care court model, the State
10 shall—

11 “(A) establish a special court for adjudica-
12 tion of disputes over injuries allegedly caused
13 by health care providers or health care organi-
14 zations;

15 “(B) ensure that such court is presided
16 over by judges with expertise in and an under-
17 standing of health care;

18 “(C) provide authority to such judges to
19 make binding rulings on causation, compensa-
20 tion, standards of care, and related issues;

21 “(D) provide for an appeals process to
22 allow for a review of decisions; and

23 “(E) at its option, establish an administra-
24 tive entity similar to the entity described in

1 paragraph (3)(a)(i)(I) to provide advice and
2 guidance to the special court.

3 “(e) APPLICATION.—Each State desiring a grant
4 under subsection (a) shall submit to the Secretary an ap-
5 plication, at such time, in such manner, and containing
6 such information as the Secretary may require.

7 “(f) REPORT.—Each State receiving a grant under
8 subsection (a) shall submit to the Secretary a report evalu-
9 ating the effectiveness of activities funded with grants
10 awarded under such subsection at such time and in such
11 manner as the Secretary may require.

12 “(g) TECHNICAL ASSISTANCE.—The Secretary shall
13 provide technical assistance to the States awarded grants
14 under subsection (a). Such technical assistance shall in-
15 clude the development, in consultation with States, of com-
16 mon definitions, formats, and data collection infrastruc-
17 ture for States receiving grants under this section to use
18 in reporting to facilitate aggregation and analysis of data
19 both within and between States. States not receiving
20 grants under this section may also use such common defi-
21 nitions, formats, and data collection infrastructure.

22 “(h) EVALUATION.—

23 “(1) IN GENERAL.—The Secretary shall enter
24 into a contract with an appropriate research organi-
25 zation to conduct an overall evaluation of the effec-

1 tiveness of grants awarded under subsection (a) and
 2 to annually prepare and submit a report to the ap-
 3 propriate committees of Congress. Such an evalua-
 4 tion shall begin not later than 18 months following
 5 the date of implementation of the first program
 6 funded by a grant under subsection (a).

7 “(2) CONTENTS.—The evaluation under para-
 8 graph (1) shall include—

9 “(A) an analysis of the effect of the grants
 10 awarded under subsection (a) on the number,
 11 nature, and costs of health care liability claims;

12 “(B) a comparison of the claim and cost
 13 information of each State receiving a grant
 14 under subsection (a); and

15 “(C) a comparison between States receiv-
 16 ing a grant under this section and States that
 17 did not receive such a grant, matched to ensure
 18 similar legal and health care environments, and
 19 to determine the effects of the grants and sub-
 20 sequent reforms on—

21 “(i) the liability environment;

22 “(ii) health care quality; and

23 “(iii) patient safety.

24 “(i) OPTION TO PROVIDE FOR INITIAL PLANNING
 25 GRANTS.—Of the funds appropriated pursuant to sub-

1 section (k), the Secretary may use a portion not to exceed
 2 \$500,000 per State to provide planning grants to such
 3 States for the development of demonstration proposals
 4 meeting the criteria described in subsection (c). In select-
 5 ing States to receive such planning grants, the Secretary
 6 shall give preference to those States in which current law
 7 would not prohibit the adoption of an alternative to cur-
 8 rent tort litigation.

9 “(j) DEFINITIONS.—In this section:

10 “(1) HEALTH CARE SERVICES.—The term
 11 ‘health care services’ means any services provided by
 12 a health care provider, or by any individual working
 13 under the supervision of a health care provider, that
 14 relate to—

15 “(A) the diagnosis, prevention, or treat-
 16 ment of any human disease or impairment; or

17 “(B) the assessment of the health of
 18 human beings.

19 “(2) HEALTH CARE ORGANIZATION.—The term
 20 ‘health care organization’ means any individual or
 21 entity which is obligated to provide, pay for, or ad-
 22 minister health benefits under any health plan.

23 “(3) HEALTH CARE PROVIDER.—The term
 24 ‘health care provider’ means any individual or enti-
 25 ty—

1 “(A) licensed, registered, or certified under
2 Federal or State laws or regulations to provide
3 health care services; or

4 “(B) required to be so licensed, registered,
5 or certified but that is exempted by other stat-
6 ute or regulation.

7 “(4) NET ECONOMIC LOSS.—The term ‘net eco-
8 nomic loss’ means—

9 “(A) reasonable expenses incurred for
10 products, services, and accommodations needed
11 for health care, training, and other remedial
12 treatment and care of an injured individual;

13 “(B) reasonable and appropriate expenses
14 for rehabilitation treatment and occupational
15 training;

16 “(C) 100 percent of the loss of income
17 from work that an injured individual would
18 have performed if not injured, reduced by any
19 income from substitute work actually per-
20 formed; and

21 “(D) reasonable expenses incurred in ob-
22 taining ordinary and necessary services to re-
23 place services an injured individual would have
24 performed for the benefit of the individual or

1 the family of such individual if the individual
2 had not been injured.

3 “(k) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated to carry out this section
5 such sums as may be necessary. Amounts appropriated
6 pursuant to this subsection shall remain available until ex-
7 pended.”.

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